***THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

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+WRIT PETITION NO.16698 OF 2003

%15-06-2005

K. SUBRAMANYAM .. PETITIONER.

VS.

$ THE MANDAL REVENUE OFFICER, SOMALA MANDAL, CHITTOOR DISTRICT AND 16 OTHERS ..RESPONDENTS

! COUNSEL FOR THE PETITIONER : MR. N. ASHOK KUMAR

^ COUNSEL FOR RESPONDENTS 1 TO 3: GP FOR ASSIGNMENT

COUNSEL FOR RESPONDENTS 4 TO 17: MR. M.RAJAMALLA REDDY

< Gist:

> Head Note:

? CITATIONS:

1. 1989(1) A.P.L.J. Page 108

2. 1992(2) A.L.T. 564

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 16698 of 2003

Between:

K.Subramanyam s/o. K. Ramaiah
R/o. Kanchamvari Indlu Village, G.P. Pally Post
Irala Mandal & Panchayat,

Chittoor district.

..... PETITIONER

AND

1 The Mandal Revenue Officer,
Somala Mandal, Chittoor District.

2 The Sub-Collector,
Madanapally, Chittoor district.

3 The District Collector,
Chittoor, Chittoor District

4 E. Adi Lakshmi, W/o.K. Kannaiah,

5 M. Vasantha, W/o.M. Chinabba,

6 N. Lalitha, W/o. N. Babu,

7 N. Jayamma, W/o. N. Chandra,

8 E. Lakshmi Devi, W/o. E. Bhimaiah,

9 P. Bujjamma, W/o. Gangulappa,

10 M. Ramanamma, W/o. M. Venkata Swamy

11 M. Venkatamma, W/o. M. Subrahmanyam

12 E. Sarojamma, W/o. Dharmaiah,

13 E. Parvathi, W/o. E. Seenu,

14 E. Ratnamma, W/o. E. Seenaiah,

15 E. Sarojamma, W/o. E. Subramanian,

16 M. Samakka, W/o. late Krishnaiah,

17 M. Chittamma, W/o. M. Chandra

Respondents 4 to 17 are residents of Basivireddi Indlu St Colony,

Govindareddipalli (Post), Irala Mandal, Chittoor District.

(Respondents 4 to 17 are added as per court orders in

W.P.M.P. No.30602 of 2004, dated 25-01-2005)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or Direction more particularly one in the nature of Writ of Mandamus a) declaring the action of respondents in not allotting the land in Sy.No.434/1 situated at
81-Upperpally Village, Somala Mandal, Chittoor district as illegal and arbitrary. b) Direct the respondents not to allot the land in Sy. No.434/1 of 81-Upperpally village, Somala Mandal to any 3rd party till disposal of the application of the petitioner, c) direct the respondents not to dis-possess the petitioner from the land in Sy.No.434/1 of 81-Upperpally village, Somala Mandal Chittoor dt. and pass any further order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner :Mr.N.ASHOK KUMAR

Counsel for the Respondents 1 to 3: GP FOR ASSIGNMENT

Counsel for the Respondents 3 to 17: Mr. M. Rajamallareddy

The Court made the following :

ORDER:

This writ petition is filed by one K. Subrahmanyam, with a prayer to issue an order or direction, one in the nature of writ of Mandamus declaring the action of the respondents 1 to 3 in not allotting the land in Survey No.434/1, situated at 81-Upparapally village, Somala Mandal, Chittoor district as illegal and arbitrary. A further direction is also sought for against the respondents 1 to 3 not to allot the land in survey number 434/1 of 81-Upparapally village to any third party. The respondents 4 to 17 came on record as per the orders in W.P.M.P.No.3064/2004.

They claimed that they are the assignees of Ac.0.03 cents each in survey number 434.

It is the case of the writ petitioner that he served in the Indian Army for about 17 years and retired from service in the year November, 2001. He submitted an application for allotment of agricultural land in Chittoor district to his superior officers while in service. His superior officers forwarded his application and subsequently he sent reminders to the District Collector. The petitioner after his retirement came to his native village and occupied a government land in Survey No.434/1 admeasuring Ac.7.61 cents. He requested the authorities to grant patta for the land in his occupation. When the respondents are contemplating to allot the land to the landless poor for house sites, he has filed the writ petition with the prayer stated supra.

Respondents 1 to 3 filed counter affidavit. Sri A. Janakirama Naidu has sworn to the counter affidavit. It is stated in the counter affidavit that the petitioner is entitled for assignment to an extent of Ac.2.50 cents wet or Ac.5.00 dry as per G.O.Ms.No.743 dated
18-4-1964 and as such he cannot claim more than Ac.2.50 dry or Ac.5.00 wet and more so at a particular place. The application of the petitioner is pending for consideration. The petitioner cannot insist for grant of assignment of whole land admeasuring Ac.7.61 cents. It is further stated in the counter-affidavit that the land admeasuring Ac.7.61 cents in Survey No.434/1 was assigned to scheduled tribe persons in the year 1975 vide proceedings No.LC/460/BPM/75 and subsequently as original assignees left the village and their whereabouts would not be known, after following due process of law, their assignment was cancelled vide proceedings Nos. Roc.A/109/2001 dated 26-7-2003. The petitioner has encroached Ac.4.00 in the said survey number and therefore he has no right to continue in possession and occupation of the same. The land bearing survey No.434 is at a distance about one kilometer from the village and it is suitable for house sites. At the request of scheduled tribe persons belonging to Yanadi community in the village has been considered and pattas have been issued to them through the proceedings No.1 to 22/1413 dated 02-08-2003 and 42 and 43/1413 dated 07-08-2003. The land in question was already assigned to Scheduled Tribe persons by following the caste ratio.

The stand of the respondents 4 to 17 is that the government allotted house sites to

them and also granted pattas in respect of the said house sites.

Heard learned counsel appearing for the petitioner, Government Pleader for assignment appearing for the respondents 1 to 3 and learned counsel for the respondents 4 to 17.

Learned counsel for the petitioner submits that the petitioner being an ex-service man is entitled to occupy the government land and then ask for assignment. It is also contended by him that there is an obligation on the part of the respondents 1 to 3 to allot agricultural land to the writ petitioner who is an ex-service man, and since the writ petitioner has already occupied the government land, he cannot be evicted from it and the same is required to be assigned to him.

In support of his contentions, he placed reliance on the A.P.Board Standing Orders and the decision of our high Court in ***'G.KANTAYYA v. DISTRICT COLLECTOR, WARANGAL'*** wherein it has been held as follows:----

> "The competing claims could thus be solved by suitable adjustment by permitting the petitioners to continue in possession of the respective huts erected by them and assignment of the land occupied by them by the Government and the school can be established elsewhere in the manner envisaged earlier. It is also fairly admitted across the bar and it is the settled law of this court that when applications for assignments are pending, it is the duty of the authorities to consider them and to accord assignment. In case they are found ineligible then action is to be taken by issue of notice under Section 7 and passing order under Section 6 of the Act.

Learned government pleader for assignments appearing on behalf of the respondents 1 to 3 submits that the land has been converted into house plots and also assigned to scheduled Tribes eligible persons. He further submits that the land is very nearer to the village and it has high potential value and it is more suitable for house sites and thus, the request of the petitioner for assignment cannot be considered.

Sri M. Rajamalla Reddy, learned counsel appearing on behalf of the respondents 4 to 17 submits that the government already converted the land in question into house sites and allotted the house plots to the respondents 4 to 17 and thus request of the writ petitioner to assign the same land for agricultural purpose is not justified.

It is an undisputed fact that the petitioner has not obtained any permission before occupying the land. Learned counsel for the writ petitioner laid much emphasis on order 15 of A. P. Board Standing Orders in support of his contention, that the writ petitioner representation for assignment of the land under his possession is required to be considered by the authorities. For better understanding, I may refer relevant clause in Or.15 of the A.P.Board Standing Order and it is thus:

> Or.15.H: If a land applied for assignment by an ex-servicemen and either serving in the defence forces of India or demobilized and if the ex-serviceman is *prima facie* eligible for assignment under rules he may be permitted to occupy the land applied for pending completion of all the formalities for its assignment to prevent unauthorized occupation of such lands by landless poor persons.

It is explicit from the above referred provision that the occupant must have obtain permission before entering into the land for which assignment has been sought for. Admittedly, the writ petitioner has not obtained any permission before occupying the land in question. It can be said without any controversion that the occupation of the writ petitioner over the land in question is unauthorized. It has been held by our high court in ***'G. RAMU AND OTHERS v.COLLECTOR, ANANTHAPUR AND OTHERS'*** that in the case of unauthorized occupants where action has been taken by the Government to evict them from the poramboke lands, the high court will not give any direction under Article 226 of the Constitution of India directing the authorities to grant pattas. Since the petitioner has not obtained any permission before entering into the land, his possession cannot be categorized as permissive possession pending consideration of his application for assignment of the land. Such is the situation no direction can be issued to the respondents 1 to 3 to allot the land bearing survey number 434/1 admeasuring Ac.7.61 cents. More so, when the respondents 1 to 3 have taken a specific plea that the land has been converted into house plots and the house plots have been assigned to the original persons belonging to B.C., S.C. and S.Ts.

In the result, the writ petition fails and is dismissed. No costs.

15-06-2005.

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To

One Fair Copy to the Honourable Mr.Justice B. Seshasayana Reddy

(For his lordships kind perusal)

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Somala Mandal, Chittoor District.

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